CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: July 29, 2008 Name: John G. Rauch, Reg. No. 37,218 Signature: /John G. Rauch/ Reg. No. 37,218

CASE NO. 9623/594 (Y00547US00)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:		
	Kraft, Timothy et al.	
Serial No.:	09/832,434	Examiner: Yasin M. Barqadle
Filed:	April 10, 2001	Group Art Unit: 2153
For:	SYSTEM AND METHOD FOR MONITORTING THE INTERACTION OF RANDOMLY SELECTED USERS WITH A WEB DOMAIN	Conf. No. 3806

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450'Alexandria, VA 22313-1450

Dear Sir:

This is a reply brief in response to the Examiner's Answer mailed May 29, 2008. This Reply Brief is filed prior to the end of the two month time window provided under 37 CFR §41.41 and MPEP §1208.

1. REPLY

Appellant respectfully traverse the rejections of claims 1-7 and 13-23 as obvious over the combination of *Pogue* in view of *Cannon*. In particular, the combination of *Pogue* and *Cannon* is insufficient to establish a prima facie case of obviousness because

it does not disclose or even suggest each and every element recited in claims. Moreover, Appellant asserts that even if, *arguendo*, this combination was made, the resulting invention would not provide the recited claims.

A. CLAIM 1

Independent claim 1 stands finally rejected over the combination of U.S. Patent No. 6,112,240 to Pogue et al ("Pogue") in view of USPN. 20010020236 Cannon et al ("Cannon"). The Examiner's Answer mirrors the final office action with the exception of the 'Response to Arguments' section. Therefore, this reply brief focuses primarily on the Response to Arguments section of the Examiner's Answer.

Claim 1 recites:

> **a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population** and for transmitting usage data indicative of said interaction in the event said web browser is included within said sampled population **wherein said sampled population comprises a subset of a set of web browsers interacting with said content server;** and
> a monitoring server for receiving said usage data transmitted by said client component.

At least the **bolded passages** are not disclosed in Pogue or Cannon.

The Examiner relies on Pogue col. 7, lines 2-10, col. 4, lines 6-15, and col. 6, lines 46-col. 7, line 10 to disclose "a client component for determining whether a user identification code associated with said web browser." However, none of the cited passages disclose any determination or calculation whatsoever. At most, the cited passages merely disclose a cookie that 'may include a unique identification number indentifying the client computer.' (col. 7, lines 2-10). There is no determination screening of the browser disclosed in Pogue.

The Examiner admits that Pogue does not disclose a sampled population of users. (Examiner's Answer, p. 4). Furthermore, the Examiner states "this feature is well known in the art and would have been an obvious modification of the system disclosed by Pogue et al, as evidenced by Cannon." *Id.* Appellant respectfully disagrees. The 'sample' in Cannon refers only to the subset of television viewers who have the Nielsen equipment installed. "Using specialized equipment attached to televisions in the homes, and communicating with these devices using telephone line connections; Nielsen accumulates data." (Cannon, col. 4, ¶0064). There is no determination screening as part of the processing disclosed by Cannon. There is no sampling of the type referred to in the pending claims. Furthermore, although the Examiner contends that this feature is well known in the art, the Examiner does not cite to any prior art reference that discloses "an identification code associated….is within a sampled population."

The Examiner states: "[a]s to the limitation of the web browser being within a sampled population, Cannon is relied upon to teach this limitation. For example, Cannon whose invention is about a method of analyzing the access habits and reference of media audiences, discloses disclose [sic] tracking and analyzing the behavior of a sample population for visitors to a web pages [sic] on the World Wide Web [¶0064 and ¶0133] Therefore, the combined teaching of Cannon and Pogue disclose the argued limitation." (Examiner's Answer, p. 12).

Contrary to the characterization relied upon in the final office action and the Examiner's Answer, Cannon does not disclose or provide the teaching missing from Pogue. At best, Cannon simply discloses "the concepts and techniques of the present invention are equally applicable to tracking and analyzing the behavior of a sample population for visitors to web pages on the World Wide Web" but does not disclose how

this may be done. (Cannon, ¶0133). The system in Cannon gathers data from **all** of Nielsen's sampling devices and stores it in a database (see Cannon ¶0068-0072). There is no sampling of the type referred to in the currently pending claims. In claim 1, the sampled population is a subset of web browsers interacting with a server. In Cannon, the sample is a group of viewers, all of whom interact with television broadcasting and all of whose data is collected. This group is selected ("sampled") from the total universe of viewers of television. If the same type of "sampling" was applied in a system in accordance with claim 1, all web browsers visiting a web site would be selected from all persons interacting with the World Wide Web. Therefore, the combination of Cannon and Pogue do not disclose the argued limitation.

Throughout the Examiner's Answer, the Examiner repeatedly cites that the disclosed system in Cannon may be used to address browsing information for individuals accessing World Wide Web pages (¶0064 and ¶0133). However, Cannon does not disclose how this may be accomplished or how the sample is selected. The 'sample' in Cannon refers only to the subset of television viewers who have the Nielsen equipment installed.

Next, the Examiner argues that the combined teachings of Cannon and Pogue disclose "wherein said sampled population comprises a subset of a set of web browsers interacting with said content server." (Examiner's Answer, p. 12). Applicant respectfully disagrees. First, the Examiner states:

> For example Pogue teaches obtaining information such as the type of browser accessing web pages that include Java enables browser (e.g., Netscape navigator. TM 2.0, 3.0, or Microsoft Internet Explorer. TM. 3.0) or the type of the web browser (java enabled or non-java enabled browser as the subset.

The Examiner misconstrues this unique feature of Claim 1. The recitation "wherein said sampled population comprises subset of a set of web browsers interacting

with said content server" of claim 1 has absolutely nothing to do with type of web browser, such as java enabled or not enabled, as the Examiner suggests. In contrast, the "set of web browsers interacting with said content server" includes all of the web browsers that interact with the content server while the "subset" of web browsers are **those web browsers that are part of the sampled population of web browsers**.

Next, the Examiner argues "Also Cannon teaches generating from a sample of 5000 households, with a total of about 15,000 sample members living those households based on viewing logs (0068)." Again, this has absolutely no relevance to the argued element of claim 1. By adding the sentences in ¶0068 surrounding the one quoted by the Examiner, this becomes more clear: "Television viewing for the population of the United States is estimated by A. C. Nielsen Company (Nielsen) based on viewing logs generated from a sample of 5,000 households, with a total of about 15,000 sample members living in those households. Using specialized equipment attached to televisions in the homes, and communicating with these devices using telephone line connections; Nielsen accumulates data." The entire population of the United States do not have "specialized equipment" attached to their televisions. Moreover, the entire population of the United States do not communicate with the specialized equipment.

Next, the Examiner argues that Cannon teaches "demographic rating based on the number of people in a particular demographic group who saw a show divided by the number of people in the population for that demographic group. (0113)." Again this clearly teaches determining a sampled population based on the number of users identified in accessing the broadcast program. Appellant respectfully disagrees. The 'population' in Cannon includes all of the users with the specialized equipment, not a subset of the users. The "sample" in Cannon refers only to the subset of television viewers who have

the Nielsen equipment installed. Nielsen's data collection equipment does not interact with non-Nielsen viewers-those viewers don't have the Nielsen equipment installed. So the Nielsen "sample" is not the same as the "sampled population [which] comprises a subset of a set of web browsers interacting with said content server" of claim 1. There is no sampling factor in the cited paragraph above. At best, Cannon simply shows how many people **within the sample** saw the show. Examiner does not show how this 'clear teaching' is made.

Lastly, the Examiner states:

> Finally, Cannon teaches 'It should be noted that the concepts and techniques of the present invention are equally applicable to tracking and analyzing the behavior of a sample population for visitors to web pages on the World Wide Web.' [0133]. In this case Cannon does teach the sampling and a subset of users based on demographic choices and Pogue teaches set of browsers interacting with a web server, therefore the combined teachings of Pogue and Cannon teach the argued limitation. (Examiner's Answer, p. 13).

As discussed above, neither Pogue nor Cannon teach the element. Briefly, the 'sampling' is once again based on those households who have the specialized equipment. The 'subset of users based on demographic choices" incorrectly characterizes the element of claim 1 and furthermore, it does not make any sense. Appellant believes the only possible meaning the Examiner is making is that only a "subset" of users in a particular demographic where all of those in that demographic are sampled watch a particular show. Appellant believes the Examiner misunderstands this element of claim 1 (wherein said sampled population comprises subset of a set of web browsers interacting with said content server). It appears the Examiner is comparing the subset of browsers (those browsers that are part of a sample) with the number of users in a particular demographic who watch a television show (all of the users in that demographic who have a Neilson

box). Furthermore, not all of the television viewers in the United States interact with a Nielson box.

In response to Appellant's argument that if the same type of sampling in Cannon was applied to a system in accordance with claim 1, all web browsers visiting a web site would be selected from all persons interacting with the World Wide Web, the Examiner responds: "since the group is selected ("sample") from a particular number of viewers, it is only those that are sampled that it would apply not all viewers as suggested by the Appellant. In other words only the sampled web browsers visiting a web site would only [sic] be selected." (Examiner's Answer, p. 16). Appellant respectfully disagrees. Cannon begins with the sampled population (i.e. those having specialized equipment). Thus, applying the same type of sampling in Cannon to a system in accordance with claim 1 would provide a system where the sample is preselected before it ever reaches claim 1. Thus, there would be no determination of whether a web browser is within a sampled population if Pogue and Cannon are combined. Therefore, even if this combination were made, the resulting invention would not provide the recited claims.

For at least these reasons, Appellant maintains that the combination of Pogue and Cannon is insufficient to establish a prima facie case of obviousness. Thus independent claim 1 is allowable over the cited art. Dependent claims 2 and 4-6 should therefore also be allowed for at least the same reasons discussed above. Although dependent claims 2 and 7 should be allowed for at least the same reasons as claim 1, significant mischaracterization of these claims by the Examiner warrants further discussion.

1. Dependent Claim 3

Contrary to the Examiner's statements on the last paragraph of page 5 and the first 2 lines of page 6, Pogue does not disclose Claim 3. Claim 3 recites: "[t]he system of

claim 1 wherein said client component **includes a sampling tag** embedded within a web page provided to said web browser by said content server, **said sampling tag determining whether persistent client side state information stored on said client computer includes identification information suitable for use as said user identification code**." (Emphasis added). As the Examiner agreed, Pogue does not show a sampled population. (Examiner's Answer, p. 4). Therefore, Pogue cannot possibly disclose a sampling tag. The function of the sampling tag of claim 1 is described in detail in ¶0022 of the detailed description. For example, "If the sampling tag determines that this identifier value includes a random component (e.g., a time value or assigned user number) (step 1 lo), then this random component is extracted and designated as a sampling identifier **to be used in determining whether the activity of the web browser 40 will be monitored** (step 112)." (emphasis added). Therefore, since as Examiner admits, Pogue does not show a sampled population of users, Pogue cannot possibly disclose claim 3. Claim 3 should therefore also be allowed.

2. Dependent Claim 7

The Examiner argues that Pogue discloses claim 7. Claim 7 recites: "[t]he system of claim 3 wherein said random number is stored on said client computer as said user identification code in the form of a sampling cookie distinct from said persistent client side state information, **said sampling tag determining whether said user identification code indicates that said web browser is included within said sampled population.**" Once again, the Examiner's statements are contracting as the Examiner admits that Pogue does not disclose a sampled population, but then proceeds to state that Pogue does disclose the above. Thus, claim 7 should therefore also be allowed.

B. CLAIM 13

The rejection of claim 13 and all claims dependent therefrom should be withdrawn for the same reasons stated for claim 1. Claim 13 includes limitations substantially similar to claim 1. Claim 13 describes a method while claim 1 describes a system. For the reasons stated above in conjunction with claim 1, the proposed combination of Pogue and Cannon does not render independent claim 13. Dependent claims 14-16 should therefore also be allowed for at least the same reasons discussed above. Applicants request withdrawal of the rejection of claims 13- 16 under 3 5 U.S.C. §103(a).

C. CLAIM 17

The rejection of claim 17 and all claims dependent therefrom should be withdrawn for the same reasons stated for claim 1. Claim 17 includes limitations substantially similar to claim 1. Additionally, claim 17 recites:

> determining whether a user identification code associated with said web browser indicates that said web browser is within a randomly selected subset of a set of web browsers interacting with said second server computer;
> generating usage data indicative of said interaction in the event said web browser is within said randomly selected subset

The Examiner does not cite any passages that disclose the elements above. The Examiner's answer states: "[o]ther than the word random, the rest of the limitation has been addressed by the Examiner (see response to claim 1 above. Furthermore, Pogue teaches "the tracker tag preferably includes Javascript code that is embedded in the HTML code of the web page. Where the code includes random number such as "123456789" that is unique." (Examiner's answer, p. 17).

The Examiner mischaracterizes claim 17. First, "randomly selecting" web browsers is not the same thing as assigning a random number to identify the web

browser. Second, the Examiner does not address "**generating usage data** indicative of said interaction **in the event said web browser is within said randomly selected subset"** anywhere in the discussion for claim 1. (emphasis added).

Thus independent claim 17 is allowable over the cited art. Dependent claims 18-20 should therefore also be allowed for at least the same reasons as claim 17.

D. CLAIM 21

The Examiner's answer does not provide any new arguments for claim 21. For the reasons stated above in conjunction with claim 1, the proposed combination of Pogue and Cannon does not render independent claim 21, or any claim that depends on claim 13 unpatentable. Dependent claims 22-23 should therefore also be allowed for at least the same reasons discussed above.

2. CONCLUSION

For at least these reasons, it is clear that the combination of Pogue and Cannon does not disclose each and every element set forth in claims and/or provide the suggestion, motivation or even a reason to combine these distinctly different systems and methods. The cited references, either alone or in combination with the Examiner's assertions, do not provide a valid basis for a *prima facie* obviousness rejection of the present claims. Accordingly, Appellants submit that the present invention is fully

patentable over Pogue et al. and Cannon and the Examiner's rejection should be REVERSED.

Respectfully submitted,

Dated: July 29, 2008

/John G. Rauch/ Reg. No. 37,218
John G. Rauch
Registration No. 37,218
Attorney for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610
(312) 321-4200